

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 06-295(DSD/JJG)

Paul Kozloski, individually,  
Duke Kasprisin, M.D., individually  
and Kevin Noyes, individually

Plaintiffs,

v.

**ORDER**

American Tissue Services  
Foundation, a Delaware not for  
profit organization,

Defendant.

This matter is before the court on plaintiffs' appeal from Magistrate Judge Jeanne J. Graham's November 7, 2007, denial of plaintiffs' motion to amend. In that ruling, the magistrate judge denied as untimely under the amended pretrial scheduling order plaintiffs' motion to amend their complaint and assert punitive damages. Based on a review of the record and the parties' submissions, the court concludes that Magistrate Judge Graham's order is neither clearly erroneous nor contrary to law. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D. Minn. LR 72.1(b)(2).

The facts governing the substantive claims in this case are set forth in the court's September 27, 2007, order, granting in part and denying in part defendant's motion for summary judgment. See Kozloski v. Am. Tissue Servs. Found., Civ. No. 06-295, 2007

U.S. Dist. LEXIS 72302, at \*1-7 (D. Minn. September 27, 2007). The magistrate judge issued a pretrial scheduling order on April 19, 2006, setting December 15, 2006, as the deadline by which the parties were to serve motions to amend the pleadings or add parties. The magistrate judge amended this order on February 1, 2007, and extended the deadline for all nondispositive motions to May 1, 2007. On October 24, 2007, nearly six months after expiration of the deadline for nondispositive motions, plaintiffs moved to amend their complaint to assert punitive damages.

Where the deadline to amend the pleadings has expired under a pretrial scheduling order, a motion to amend "is most properly considered within the framework of Rule 16(b), Federal Rules of Civil Procedure.'" Ringsred v. City of Duluth, 187 F. Supp. 2d 1141, 1146 n.5 (D. Minn. 2001) (quoting Alholm v. Am. Steamship Co., 167 F.R.D. 75, 77 (D. Minn. 1996)). Rule 16(b)(4) provides that a pretrial scheduling order "may be modified only for good cause and with the judge's consent." Here, plaintiffs have not established good cause for the delay. Indeed, plaintiffs note that their motion to amend is based on deposition testimony that was taken before the May 1, 2007, deadline and provide no justification for the belated motion.

Accordingly, **IT IS HEREBY ORDERED** that the magistrate judge's November 7, 2007, denial of plaintiffs' motion to amend is affirmed.

Dated: December 18, 2007

s/David S. Doty  
David S. Doty, Judge  
United States District Court